

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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ESTHER HWANG,

Plaintiff,

vs.

Case No. C07-02718 MMC

CITY AND COUNTY OF SAN FRANCISCO,  
ET AL.,

Defendants.

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**CERTIFIED  
COPY**

Deposition of

EUGENE AINSWORTH

Tuesday, May 20, 2008

REPORTED BY: LESLIE CASTRO, CSR #8876

BONNIE L. WAGNER & ASSOCIATES  
Court Reporting Services  
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San Francisco, California 94104  
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I N D E X

Deposition of EUGENE AINSWORTH

Tuesday, May 20, 2008

Page

EXAMINATION BY MR. CONNOLLY

6, 63, 65

EXAMINATION BY MR. NISENBAUM

40, 64

Certified Questions:

Page

Line

E X H I B I T S

Deposition of EUGENE AINSWORTH

Tuesday, May 20, 2008

(No exhibits were offered.)

1 BE IT REMEMBERED THAT, pursuant to Notice, and on  
2 Tuesday, May 20, 2008, commencing at the hour of  
3 3:26 o'clock p.m. thereof, at the OFFICE OF THE CITY  
4 ATTORNEY, Fox Plaza, Seventh Floor, 1390 Market  
5 Street, San Francisco, California 94102, before me,  
6 LESLIE CASTRO, a Certified Shorthand Reporter in and  
7 for the State of California, personally appeared

8 EUGENE AINSWORTH

9 Called as a witness by the Defendant, who, being by me  
10 first duly sworn, was thereupon examined and testified  
11 as hereinafter set forth.

12  
13 APPEARANCES:

14 LAW OFFICES OF JOHN L. BURRIS, 7677 Oakport  
15 Street, Suite 1120, Oakland, California 94621,  
16 represented by BENJAMIN NISENBAUM, Attorneys at Law,  
17 appeared as counsel on behalf of the Plaintiff.

18  
19 OFFICE OF THE CITY ATTORNEY, Fox Plaza, Sixth  
20 Floor, 1390 Market Street, San Francisco, California  
21 94102, represented by SEAN F. CONNOLLY, Deputy City  
22 Attorney, appeared as counsel on behalf of the  
23 Defendant.

24 Also present: Ashley Morrow, Videographer

25 ---oOo---

P-R-O-C-E-E-D-I-N-G-S

---oOo---

THE VIDEOGRAPHER: Here begins disk 1, volume 1 in the deposition of Eugene Ainsworth in the case of Esther Hwang versus the City and County of San Francisco. In the United States District Court, the Northern District of California. The case number of which is C07-02718 MMC.

Today is May 20th, 2008. The time is 3:26 p.m.

This deposition is being taken at 1390 Market Street in San Francisco, California, and was made at the request of the defendant represented by the city attorney of San Francisco.

The court reporter producing the official transcript of today's testimony is Leslie Castro. The videographer is Ashley Morrow of Legal Digital Technologies.

Would Counsel please identify yourselves and state whom you represent.

MR. CONNOLLY: My name is Sean Connolly, Deputy City Attorney, representing the city and Officers Jesse Serna and Nelson Artiga.

MR. NISENBAUM: Ben Nisenbaum of the Law Offices of



03:27:30 1 John Burris. I'm one of the attorneys for Esther Hwang  
03:27:34 2 the plaintiff in this case.

03:27:36 3 THE VIDEOGRAPHER: And would the court reporter  
03:27:36 4 please swear in the witness.

03:27:38 5 EUGENE AINSWORTH

03:27:38 6 being first duly sworn, testified as follows:

03:27:38 7 THE WITNESS: I do.

03:27:38 8  
03:27:38 9 EXAMINATION BY MR. CONNOLLY:

03:27:49 10 MR. CONNOLLY: Q Okay. Good afternoon,  
03:27:52 11 Mr. Ainsworth. My name is Sean Connolly. I'm first  
03:27:55 12 going to give you a glass of water if you want a  
07:57 13 glass of water.

03:27:58 14 A. Thank-you.

03:27:58 15 Q. You've heard all those present in the room and  
03:28:01 16 I think we've made the introductions up to this point.

03:28:05 17 First of all, I thank-you for coming in this  
03:28:07 18 afternoon. I appreciate your time. I think you've  
03:28:12 19 indicated that you know what a deposition is, and in  
03:28:16 20 that case I'm going to go over very briefly what this  
03:28:20 21 particular deposition is and some of the rules that  
03:28:24 22 lawyers let govern them in these conversations.

03:28:28 23 This is a tool that is allowed in a lawsuit to  
03:28:32 24 allow the parties to basically do discovery or conduct  
03:28:37 25 investigation to help find out what the facts are of the

Q. Were her words slurred?

A. Not necessarily. There wasn't enough said to tell whether -- it wasn't like she was trying to carry on a conversation.

Q. So you couldn't tell if she was slurring her words?

A. No.

Q. Did you have a sense when you heard her voice that she sounded intoxicated?

A. No. Her looks and her actions inside the store led me to believe that she was intoxicated.

Q. Nothing about her voice led you to believe that she was intoxicated?

A. No. Just her looks, the way she was handling herself.

Q. I see you wear glasses.

A. Uh-huh.

Q. And I take it you wore glasses on the night of the incident?

A. Uh-huh.

Q. What is your vision?

A. My vision in the left eye is 20/20 with the glasses. And in the right eye, I'm totally blind.

Q. With or without glasses?

A. With or without glasses. The left eye without

1 the glasses, I can still see because I had an operation  
2 and I had a lens in.

3 Q. I have Lasix. I'm now a 20/15 in my left eye,  
4 I was about 20/80 so that's much improved, especially my  
5 driving.

6 By the way, have you had any contact with any  
7 representative of the San Francisco City Attorney's  
8 Office outside of today?

9 A. Yes, I have.

10 Q. Okay. And do you recall who you've had  
11 contact with?

12 A. Ms. Blackman -- is it Blackman?

13 Q. And do you recall when that was?

14 A. That was shortly after this incident, almost a  
15 year ago.

16 Q. And on how many occasions did you have contact  
17 with Ms. Blackman?

18 A. Once.

19 Q. And did you --

20 A. Once personally, and then she called me just  
21 shortly to let me know this was coming up.

22 Q. You mean she called you again recently?

23 A. Yeah.

24 Q. About how long ago was that?

25 A. This is last week -- this week -- the first --



1:11:55 1 yeah, last week. To let me know that this was coming up  
1:12:00 2 and that was it. So those are the only two occasions  
1:12:03 3 that I had.

1:12:04 4 Q. On the first occasion when you spoke to  
1:12:06 5 Ms. Blackman, what was -- what did you talk to her  
1:12:09 6 about?

1:12:10 7 A. The incident and what I saw.

1:12:12 8 Q. And do you have a sense of about how long  
1:12:15 9 after the incident you had that contact with  
1:12:17 10 Ms. Blackman?

1:12:20 11 A. Gosh, I don't know. It might have been -- you  
1:12:26 12 know, I really don't know, maybe a month.

1:12:33 13 Q. And do you know if she -- did she tape record  
1:12:36 14 your conversation?

1:12:44 15 A. I don't remember. I don't think so. Although  
1:12:49 16 she might have but I don't know.

1:12:51 17 Q. And what did she ask you specifically?

1:12:56 18 A. Just what did I see. And she just wanted to  
1:13:00 19 see -- get my side of it.

1:13:02 20 Q. And did she ever ask you -- did she ever ask  
1:13:10 21 you specific questions that suggested certain responses?

1:13:22 22 A. Would you repeat that again now.

1:13:24 23 Q. Sure.

1:13:25 24 Did she ask you any questions that suggested  
1:13:28 25 certain responses from you?

13:31 1 MR. CONNOLLY: I'm going to object to the form of  
4:13:33 2 the question as argumentative and vague.

4:13:35 3 THE WITNESS: I --

4:13:36 4 MR. CONNOLLY: Hold on, Mr. Ainsworth, let me just  
4:13:38 5 make the objection.

4:13:39 6 I'm going to object to the form of the  
4:13:41 7 question as argumentative, vague and confusing. I'd ask  
4:13:48 8 Counsel to restate it or reformulate.

4:14:06 9 MR. NISENBAUM: Sure.

4:14:08 10 Q. About how long did you speak with Ms. Blackman  
4:14:11 11 during that first time you talked to her?

4:14:17 12 A. It might have been 20 minutes. I don't  
4:14:19 13 remember if it was that long.

4:14:24 14 Q. And where did that conversation take place?

4:14:26 15 A. In this building.

4:14:27 16 Q. So you were asked to come to the City  
4:14:28 17 Attorney's office?

4:14:29 18 A. Yes.

4:14:39 19 Q. Were you asked if you knew -- if you had seen  
4:14:42 20 Officer Serna out in the streets before?

4:14:50 21 A. I don't remember whether she had. No, I don't  
4:14:53 22 think she asked me that.

4:14:55 23 Q. Were you asked whether you saw Ms. Hwang kick  
15:02 24 any officer?

4:15:08 25 A. No. She asked me what I saw, and I think I

1 was the one that come up with that. And she may have --  
2 after I had said it, she may have asked me again, that I  
3 can't....

4 Q. If I understood your testimony correctly, it  
5 sounds like you've seen officers take other people into  
6 custody out on Broadway at night; is that right?

7 A. Oh, yes, absolutely.

8 Q. And do you have a sense of how many times  
9 you've seen that?

10 A. At least -- at least two, three times a month.

11 Q. And out of the officers who you observed  
12 during this incident with Esther Hwang, had you seen any  
13 of those specific officers arrest anyone before?

14 A. Gosh, that I cannot say for sure. Bear in  
15 mind, I lived on Broadway for 20 years, and during that  
16 time, I may have seen one of those officers arrest three  
17 or four people, but I don't remember.

18 Q. Have you ever had occasion to call the police  
19 when you were -- let me ask --

20 A. Yes, at the store, yes, I have.

21 Q. That's what I was going to ask you.

22 While working at the store, you've had  
23 occasion to call the police?

24 A. Yes.

25 Q. And on how many occasion would you say?



1 A. Maybe in the six-year period that I've worked  
2 with the owner there, I think maybe twice.

3 Q. And what was the first -- when was the first  
4 time that you recall?

5 A. The first time was when we had two individuals  
6 in. One of them was threatening to destroy the store,  
7 and the other one said he was going to get the car and  
8 pick him up. And I had placed a call to the police  
9 because I was off to the side, and they didn't really  
10 notice me, and I had my cell phone. They were both  
11 taken into custody just shortly after they left the  
12 store.

13 The other time we had a couple of individuals  
14 that stole a bottle of champagne.

15 Q. On the first time, do you recall which  
16 officers responded?

17 A. Yes. The first time it was one of the  
18 old-time officers up there, his name is Alvarez. He's  
19 the actual beat officer for that Broadway.

20 Q. And do you recall when that was, the first  
21 time, what year?

22 A. No, I don't. That was -- that was probably --  
23 I have to guess 2003, 2004, somewhere around there.

24 Q. And the second time, do you recall  
25 approximately when that was?



4:18:23 1 A. The second time was probably around the same  
4:18:25 2 time. And the officer then that responded I think was  
4:18:35 3 one of the Asian officers. And I don't remember -- I  
4:18:41 4 don't remember his name right offhand.

4:18:45 5 Q. When you say "one of the Asian officers," do  
4:18:47 6 you mean an Asian officer?

4:18:49 7 A. Yeah. They have two or three Asian officers  
4:18:51 8 that I know of up there. And it was one of those two or  
4:18:54 9 three, I don't remember which one.

4:18:58 10 Q. On the night of this incident with  
4:19:00 11 Esther Hwang, were there Asian officers who were  
4:19:03 12 involved in that -- in her arrest?

4:19:17 13 A. Not that I can recall. The only two main  
4:19:24 14 officers involved in her arrest were the Officer Serna  
4:19:27 15 and Officer Artiga that -- there may have been -- now  
4:19:31 16 one of the officers that was standing against the  
4:19:34 17 building I believe was an Asian officer. The one that  
4:19:38 18 maybe walked away, maybe. Again, I don't remember for  
4:19:40 19 sure. But I think one of them might have been of Asian  
4:19:46 20 descent.

4:19:47 21 Q. Was he involved in responding to the second  
4:19:49 22 call --

4:19:50 23 A. No. No. He had already left. He had moved  
4:19:52 24 earlier and moved down the block a little bit.

4:19:56 25 Q. I'm sorry. I think you misunderstood my

19:58 1 question.

4:19:58 2 Was he involved in the response the second  
4:20:03 3 time you called the police back in 2003, 2004?

4:20:08 4 A. No. No. He -- he was -- I think he was a new  
4:20:11 5 one. They changed officers around. I don't think he  
4:20:16 6 was around at that time.

4:20:22 7 Q. When you've been -- have you been a witness  
4:20:24 8 for the police in any other incidents?

4:20:26 9 A. No.

4:20:28 10 Q. Have the police after asked you to be a  
4:20:30 11 witness in any other incident?

4:20:32 12 A. No.

4:20:32 13 Q. Now, it sounds like you have observed --  
4:20:34 14 strike that.

4:20:38 15 In the times when you've observed other people  
4:20:40 16 arrested out on Broadway, it sounds like you've observed  
4:20:47 17 police use more force than they've used with Ms. Hwang;  
4:20:51 18 is that correct?

4:20:51 19 A. Oh, absolutely, yes.

4:20:53 20 Q. And in those instances, did you ever offer to  
4:20:58 21 be a witness for the police?

4:21:00 22 A. No. I didn't offer to be a witness in this  
4:21:04 23 case.

4:21:11 24 Q. Your prior contacts with Officer Artiga, can  
4:21:14 25 you describe them?

1 A. Prior contacts?

2 Q. Yes.

3 A. Just "Hi. How are you?" And that's it. They  
4 would -- Officer Artiga and Serna were only on Broadway,  
5 like I say, basically Friday and Saturday nights. And  
6 not all Friday and Saturday nights. It depends on what  
7 shift they happened to be on whether they were on  
8 Broadway. And I would see them enough to say hi and  
9 that's it.

10 Q. Bearing in mind that this incident occurred  
11 approximately May 12th, 2007, when was the first time  
12 that you recall Officer Artiga patrolling Broadway  
13 before that, the first time you saw him on Broadway?

14 A. I probably seen them a couple of years prior  
15 to that.

16 Q. Is it fair to say that you saw him regularly  
17 patrolling Broadway from the point when you first saw  
18 him up to the --

19 A. From time to time I would see him on Broadway.  
20 Not regularly, no. I don't think any of them were  
21 regularly patrol Broadway.

22 The only officers that regularly patrolled  
23 Broadway were an Officer Alvarez and an Officer Kangra  
24 [phonetic]. Recently, prior to that, it was an  
25 Officer Brandt were the basic neighborhood officers that



2:51 1 were assigned to the Broadway beat.

4:22:54 2 These officers were on Broadway only because  
4:22:57 3 Broadway had gotten so out of hand at times that they  
4:23:00 4 needed extra officers out there.

4:23:03 5 Q. Okay. About how many times did you see  
4:23:06 6 Officer Artiga before this incident when Officer Artiga  
4:23:13 7 appeared to be patrolling Broadway?

4:23:20 8 A. Over how many -- how long a period of time?

4:23:23 9 Q. Well, from the time that you first noticed --  
4:23:26 10 the first time you noticed him on patrol on Broadway up  
4:23:29 11 to the time when this occurred in May, 2007,  
4:23:32 12 approximately.

23:42 13 A. I don't know. Maybe over a period of a couple  
4:23:46 14 of years. I really don't remember when I first noticed  
4:23:49 15 him out there. And I didn't see him that often. It was  
4:23:53 16 maybe -- maybe prior to the Broadway beat he was out  
4:24:02 17 there. I might have seen him maybe once every three or  
4:24:07 18 four months. It wasn't a regular thing.

4:24:10 19 Q. And did you speak to him at all during any of  
4:24:12 20 those prior --

4:24:13 21 A. I may have spoken to him once or twice, yes.

4:24:17 22 Q. And do you recall what the content of those  
4:24:20 23 conversations?

24:22 24 A. No, nothing other than "How was your night?  
4:24:24 25 How you doing?" Nothing -- nothing personal. I had no



1 STATE OF CALIFORNIA )

2 ) Ss.

3 COUNTY OF CONTRA COSTA )

4  
5 I hereby certify that the witness in the  
6 foregoing deposition, named EUGENE AINSWORTH, was by  
7 me duly sworn to testify the truth, the whole truth,  
8 and nothing but the truth in the within-entitled  
9 cause; that said deposition was taken at the time and  
10 place therein stated; that the testimony of said  
11 witness was reported by me,

12 LESLIE CASTRO,

13 A Certified Shorthand Reporter and disinterested  
14 person, and was thereafter transcribed into  
15 typewriting; and that the pertinent provisions of the  
16 applicable code or rules of civil procedure relating  
17 to the notification of the witness and counsel for the  
18 parties hereto of the availability of the original  
19 transcript of deposition for reading, correcting and  
20 signing have been complied with.

21 And I further certify that I am not of  
22 counsel or attorney for either or any of the parties  
23 to said deposition, nor in any way interested in the  
24 outcome of the cause named in said caption.

25 IN WITNESS WHEREOF, I have hereunto set my

1 hand and affixed my seal of office the 1st day of  
2 June, 2008 .  
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7 LESLIE CASTRO  
8 C.S.R. No. 8876  
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